

FREQUENTLY ASKED QUESTIONS ON CHAPTER 43D

WHAT IS A PRIORITY DEVELOPMENT SITE?

Answer: “PDS” is a privately or publicly owned property that is:

- (1) zoned for commercial, industrial, residential, or mixed use;
- (2) eligible under applicable zoning provisions, including special permits or other discretionary permits, for the development or redevelopment of a building at least 50,000 square feet of gross floor area in new or existing buildings or structures; and
- (3) designated as a priority development site by the state Interagency Permitting Board.

*Several parcels or projects may be included within a single priority development site. Wherever possible, priority development sites should be located adjacent to areas of existing development or in underutilized buildings or facilities or close to appropriate transit services.

HOW DOES THE 43D PROGRAM AMENDMENT IN THE 2012 “JOBS BILL” IMPACT MY PRIORITY DEVELOPMENT SITE APPLICATION?

Answer: In the past, the 43D program restricted applicants to sites zoned for industrial, commercial, or mixed-use only. The program now permits areas zoned for residential use to be adopted as a 43D site. Previously approved Priority Development Sites will not be impacted by this change. The amendment to the 43D program applies only to new sites designated after August 7, 2012. However, if a community wishes to, they are now permitted to amend previously designated priority sites to include exclusively residential development or to adopt additional sites which are zoned residential.

IS SMART GROWTH CONSIDERED?

Answer: The state strongly encourages priority development sites to be located in areas that are near existing public transit service, adjacent to existing development, or in under-utilized buildings or facilities, but it is not a requirement for the site to qualify for PDS designation. For more information please visit:

http://www.mass.gov/envir/smart_growth_toolkit/pages/mod-40R.html

WHAT IS THE GOVERNING BODY?

Answer: Depends on your municipal charter, but in most cases the governing body will be a Board of Selectmen, Town Council or City Council.

WHAT IS THE ISSUING AUTHORITY?

Answer: The issuing authority is the board or department reviewing a specific permit. For the purposes of this law, the issuing authority can be any or all of the following: Planning Board, Conservation Commission, Zoning Board of Appeals (ZBA), Public Works, Fire Chief, Board of Health, and Historic Commission.

WHAT IS THE INTERAGENCY PERMITTING BOARD?

Answer: The Interagency Permitting Board (IPB) is the state board established to review and approve or deny municipal priority site development proposals and administer technical assistance grants. The members of the Board are comprised of a representative from each state office that issues permits.

For more information please visit:

<http://www.mass.gov/hed/business/licensing/43d/application/interagency-permitting-board-meeting-schedule.html>

WHICH “ISSUING AUTHORITIES” WILL BE AFFECTED BY THIS LAW?

Answer: All boards, departments or agencies that are involved with land use development.

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CHAPTER 43D - EXPEDITED LOCAL PERMITTING

WHAT PERMITS ARE AFFECTED BY THIS LAW?

Answer: Orders of conditions and wetlands decisions issued by the Conservation Commission, Special Permits issued by the ZBA and/or Planning Board, Site Plan Review issued by the Planning Board, Flammable Materials License issued by the Fire Chief, historic district decisions, and Title V and septic decisions issued by the Board of Health.

**Building permits issued by the building inspector, ANR plan approval and subdivisions under the subdivision control law are not affected by this statute.*

HOW IS THE LAW ACCEPTED BY A MUNICIPALITY?

Answer: This law is at local option which means that in order for the law to become effective in a municipality it has to be authorized by a majority vote of Town Meeting, or City/Town Council.

HOW IS A PARCEL DESIGNATED AS A PRIORITY DEVELOPMENT SITE?

Answer: Once local approval is granted, the governing body must apply for the designation through the Interagency Permitting Board. The law is not accepted until the application is approved and the governing body decides to proceed with the designation.

ARE THERE ANY TOOLS AVAILABLE TO ASSIST MUNICIPALITIES?

Answer: Yes. The Best Practices Model for Streamlined Local Permitting developed by the Mass Association of Regional Planning Agencies is available as a reference tool and provides model checklists, flow charts, and more. <http://www.mass.gov/hed/economic/eohed/pro/tools/best-practices-model-for-streamlined-local.html>

WHAT HAPPENS AFTER THE APPLICATION IS SUBMITTED TO THE BOARD?

Answer: The Interagency Permitting Board must review and determine eligibility of the proposals within 60 days of receipt from the municipality.

WHAT HAPPENS AFTER THE MUNICIPALITY HAS RECEIVED APPROVAL FROM THE STATE?

Answer: If the governing body chooses to proceed with the designation, the governing body must do the following within 120 days:

- (a) appoint a single municipal point of contact for streamlined permitting;
- (b) amend local rules, regulations, bylaws, etc. to comply with the 180 day permit timeline;
- (c) determine and make available the requirements for each permit;
- (d) establish a procedure for identifying necessary permits for a project;
- (e) establish a procedure for determining completeness of the required submissions.

After the 120-day phase-in period has expired, the municipality is required to conduct the permitting process on the PDS within 180 days. Extensions may apply in extenuating circumstances or for good cause.

HOW LONG DOES THE PDS DESIGNATION STAND?

Answer: PDS locations will maintain that designation for no less than five years. After five years, the municipality may request that the designation be removed. If no request is issued, the designation will remain in place.

DOES THIS LAW REQUIRE LOCAL BOARD AND COMMISSION TO REDUCE THEIR STANDARDS OF REVIEW?

Answer: No!! Nothing in the expedited permitting law alters the substantive jurisdictional authority of local boards or departments.

DOES THE LAW REQUIRE THAT ALL PERMIT APPLICATIONS ARE APPROVED?

Answer: No. The law only requires that all decisions are rendered by each issuing authority within 180 days.

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CHAPTER 43D - EXPEDITED LOCAL PERMITTING

WHAT HAPPENS IF AN ISSUING AUTHORITY DOES NOT RENDER A DECISION WITHIN 180 DAYS?

Answer: The application is deemed approved.

WHAT ARE THE FEES INVOLVED FOR THIS LAW?

Answer: The governing body may establish additional fees to the developer for overseeing/administering the expedited permitting process. This fee is in addition to fees already charged by the Conservation Commission, the ZBA, and the Planning Board, etc. and must be used for the purposes of this law.

WHAT EXTENSIONS MAY BE GRANTED?

Answer: The 180-day review period may be extended in the following circumstances:

(a) if an additional and originally unforeseen permit or predevelopment review is required, the timeline may be extended for a maximum of 30 days;

(b) if action by another federal, state or municipal government agency is required before the issuing authority may act, or judicial proceedings affect the ability of the issuing authority or applicant to proceed with the application, or if enforcement proceedings that could result in revocation of an existing permit and denial of the application have been commenced, the timeline may be extended;

(c) if the governing body and the applicant mutually request that the 180-day review period be waived or extend.

CAN THE ISSUING AUTHORITY USE LACK OF TIME AS A REASON FOR DENIAL?

Answer: No. An issuing authority may not use lack of time for review as a basis for denial of a permit if the applicant has provided a complete application and met all other obligations in accordance with the expedited permitting law.

WHEN CAN AN APPEAL OF A PERMITTING DECISION BEGIN?

Answer: Appeals from issuing authority decisions or from a grant by operation of law shall be filed within 20 days after the last individual permitting decision has been rendered or within 20 days after the conclusion of the 180 day period, whichever is later. The 180-day period shall be increased by the number of days in any extension granted.

WHERE ARE APPEALS HEARD? WHEN ARE THEY DECIDED UPON?

Answer: Appellants may bring consolidated appeals before the Division of Administrative Law Appeals to obtain a decision within 90 days. Appeals of DALA decisions may be filed within 20 days of the decision with Superior Court or Land Court. Appellants may also bring an appeal directly to Superior Court or Land Court (see MGL c.185 s.3A) without going through the DALA process.

ARE THE PERMITS TRANSFERABLE? WHEN DO THEY EXPIRE?

Answer: Not automatically transferable unless the permit expressly allows the transfer. Permits issued pursuant to this law shall expire in 5 years from the date of applicable appeal period for the permit. Where permits cover multiple buildings, commencement and continuation of construction of one building shall preserve the permit validity of all permits issued for that PDS.

WHAT ARE THE BENEFITS TO THE MUNICIPALITY?

Answer: A priority development site shall enable the municipality to take advantage of the following:

(a) priority consideration for state grants;

(b) priority consideration for quasi-public financing and training programs;

(c) brownfields remediation assistance;

(d) online marketing of the site and promotion of the town's pro-development regulatory climate;

(e) technical assistance provided by the regional planning council;

(f) competitive advantage for economic development opportunities.

MASSACHUSETTS PERMIT REGULATORY OFFICE

CHAPTER 43D - EXPEDITED LOCAL PERMITTING

HOW DOES THIS AFFECT THE MEPA and MASS HISTORIC COMMISSION PROCESS?

Answer: This law requires that MEPA & MHC reviews are completed within 120 days of a state determination of completeness. These reviews may occur concurrent or simultaneous to the local review but is not required.

SAMPLE WARRANT LANGUAGE

To see if the City/Town will accept the provisions of chapter 43D of the MA General Laws as amended pursuant to Section 11 of chapter 205 of the acts of 2006, and to approve the filing of an application with the Interagency Permitting Board for the designation of land at XX Street (Map XX, Parcel XX) and XX Street (Map XX, Parcel XX) as a Priority Development Site, or take any other action in relation thereto.

MORE INFORMATION

Visit www.mass.gov/mpro for a copy of the Chapter 43D statute, program regulations, applications, Interagency Permitting Board members and meeting schedule, and other valuable tools and information.